IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 988 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NATWARBHAI PUNJABHAI RAULJI @ NARESHBHAI PUNJABHAI RAULJI
Versus
THE STATE OF GUJARAT & ORS

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Appearance :
MR PREMAL R JOSHI for Applicant
MR KC SHAH APP for Respondent No.1
Respondent 2 – 3 served

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA
Date : 13/02/2006

ORAL JUDGMENT

1 RULE. Waived by learned APP Mr.K.C.Shah for the respondent No.1 State while respondents No.2 and 3 are present. Upon request of learned counsels for the parties, Rule was heard.

2 This Criminal Revision Application came to be filed against an order passed by Third Joint Judicial Magistrate, First Class, Anand, on 21st of February, 2005, below application preferred by the present petitioner under Section 98 of the Code of Criminal Procedure.

3 Facts for the purpose of this Criminal Revision Application be stated that against the present petitioner, one Criminal Case is filed for the offences punishable under Sections 363, 366 and 376 of the Indian Penal Code. The said Sessions Case is pending and the victim of the said incident is one Belaben. It appears that the applicant preferred an application before the learned JMFC, Anand, stating that on 15th of November, 2003 he had married with Belaben as per Hindu rites and, therefore, on 15th of September, 2004, father of Belaben gave complaint before Khambholaj Police Station, for which not only the applicant Natwarbhai but Belaben were arrested. However, in the said case, Belaben was recovered from the applicant, it appears that, police forwarded her to Nari Sanrakshan Gruh, Khambhat, District Kheda. While Belaben was in custody, the father of the applicant filed an application under Section 97 of the Cr.P.C. for obtaining custody of Belaben, which came to be rejected by the learned JMFC and, therefore, the accused of the case, stating that he is the husband of Belaben, preferred an application under Section 98 of the Cr.P.C. before the learned JMFC for search

warrant and custody of Belaben. Learned Judicial Magistrate, First Class, recorded the statements of the applicant as well as Belaben and Belaben stated that she was married to Natwarbhai i.e. accused - applicant herein. She has also stated that from Nari Sanrakshan Gruh she was willing to go with her husband i.e. the present applicant.

4 Thereupon, learned Magistrate rejected the application preferred by the present applicant i.e. accused on the ground that no search warrant can be issued under Section 97 of the Code of Criminal Procedure and custody of Belaben by Nari Sanrakshan Gruh cannot be termed as wrongful confinement. Hence, this Criminal Revision Application.

5 From the above, it clearly appears that the learned Judicial Magistrate, First Class, erred in considering the circumstances of the case as well as correct provisions of law. The application which the applicant preferred i.e. Criminal Misc. Application No. 3 of 2005 was under Section 98 of the Code of Criminal Procedure and not under Section 97 of the Code though it was mentioned by the applicant that search warrant be issued under Section 98 of the Cr.P.C., but basically the application is under Section 98 of the Cr.P.C. wherein the learned Magistrate is required to pass an order for immediate restoration of a women victim of abduction or lawful detention to her liberty according to law and circumstances of

the case.

6 It is not necessary to observe here that where a person is a major and the citizen of this country is entitled to go anywhere as per his/her choice, unless law so requires, no major person can be directed by any court to go and stay at certain place against his/her wish.

7 In this view of the matter, the order impugned in this Revision Application is quashed and set aside. The matter is remanded back to the learned Judicial Magistrate, First Class, Anand, to decide the said Misc. Criminal Application No. 3 of 2005 afresh and consider the application under Section 98 of the Code of Criminal Procedure and if necessary the wishes of Belaben be again ascertained by learned JMFC in coming to the conclusion. It is again not necessary to observe that the learned Judicial Magistrate, First Class, while deciding the said Misc. Criminal Application No. 3 of 2005, shall not be influenced by the order passed by the said court earlier or this order passed by this Court in this Criminal Revision Application. The learned JMFC shall decide the said Misc. Criminal Application No. 3 of 2005 as early as possible without any delay and within one month from the date of receipt of the writ of this Court. It would also be open for the applicant to prefer an application for habeas corpus, if so permissible by law.

8 In view of above, this Criminal Revision Application stands disposed of. Rule is made absolute to the above extent. DS permitted.

(J.R.VORA, J.)

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